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(5)

No. 87-281

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1987

No. 84-5627, No. 84-5770 and No. 84-5946

Henry Crawford, et. al.
Respondents

v.) CA 83-0780

La Boucherie Bernard et. al.

—o—

No. 84-5623, 84-5771, and No. 84-5947

Raymond Donovan, Secretary of
U.S. Department of Labor
Respondent

v.) CA 83-0940

Bernard H. Goldstein, et. al.
Petitioners

— o —

REPLY BRIEF FOR

PETITION FOR CERTIORARI TO THE U.S. COURT
OF APPEALS FOR THE DISTRICT OF COLUMBIA
CIRCUIT

— o — —o—

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QUESTIONS PRESENTED

5. Whether the cond-it--ion had developed deliberately or inadvertently, can the Federal Courts permit the timing, orchestrating and even manipulating of the FRCPs, FRAPs and RICO to result in litigants like Goldstein (and even the Profit Sharing Plan) being caught in "Procedural traps" so that they can be effectively denied procedural due process of law which defacto results in confiscating millions of dollars of their property and in that sense depriving them of substantive due process in violation of the 5th (Fifth) Amendment.

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RESPONSE REPLY BRIEF

Pursuant to Rule 22.5 of this Supreme Court Petitioner submits this Reply Brief or Memorandum in reply to the Respondents Memoranda or Briefs filed 9/16/87 and 10/19/87.

As a result of the Solicitor's 10/19/87 Memorandum in opposition, this Certiorari Petition argument is now, divided into two basic parts:

I. Failure of the Federal Courts to Review Goldstein's Rule 60(b) Motion which they ignored and which was an extraordinary violation of judicial discretion, which in itself warrants a reversal for this litigation.

II. The Appellate Court 3/27/87 error in affirming the 7/6/87 RICO judgment which action by the Appellate Court is in conflict with this Supreme Courts 7/1/85 decision on page 17 of the slip opinion in the Sedima Case 105 SCt. 3275, US .

This result follows because there was no loss, no injury and no damage to anyone on 7/6/84 to be trebled. See Exhibit O in Exhibits Vol. II.

____o____

1. Failure of the District and Appellate Courts to Consider or Review Petitioner's Sept. 30, 1984 Rule 60(b) Motion (Pet. (i) 4).

Without such a review the 3/27/87 opinion (Pet. 1a - 13a; 815 F2d 117-123) is flawed and must be reversed for failure to make such a review. This follows because the 60(b) Motion (at JA Vol. V - pp. 1625 - 1713) was timely filed with respect to the issues stated in Attachment 16 (See the 8/16/87 Pet. a 17a) and the issues stated in JA Vol. V - pp. 1625-1713 and pp. 2714 - 2810 which were fully briefed for the

Appellate Court. This complete briefing was done in Goldstein's 5/3/85, 6/17/85, 1/10/86 and 1/21/86 Briefs and/or Citations of Authorities. (See Exhibits P,Q,R and S in Exhibits Vol. III).

It was an extraordinary breach of judicial discretion for the U.S. District and Appellate Courts to completely ignore the Goldstein's Rule 60(b) Motion which was timely filed and adequately and completely briefed.

See not only or merely Footnote 7 cited by the Solicitor General, but also read the entire case and note in particular the concurring opinions in:

> Browder v. Director of Illinois Dept. of Corrections (1973) 434 U.S. 215, 257, 263, 54 L Ed 2d 523, 530.

A denial of this motion on appeal and/or on Petition for Certiorari would be an extrordinary breach of judicial discretion flawing the underlying 1/20/84 judgment.

With that 1/20/84 Judgment flawed as stated above there would be no underlying judgment to support either the 7/6/84 offset(forfiture)order and the 7/6/84 RICO order on pp. 12 and 13 of the 3/27/87 slip opinion; Pet. a 12 and 13)

II. Argument Concerning Goldstein's Challenge to the 7/6/84 Forfiture Order (JA Vol. I at pp. 529-530; JA Vol. II 643 at p. 679) and the 7/6/84 RICO Order (JA Vol. I at pp. 531-532; JA Vol. II 643 at p. 696) without directly challenging the 1/20/84 ERISA judgment of $997,821 itself. (Pet. 5a, 12a and 13a) Basically these arguments are:

A. If either the District Court or the Appellate Court had applied the "Offset" concept developed in the 3/27/87 opinion (Pet. a 12); then, there would have been no justification for: 1) A Forfiture Order in addition to an "Offset" on 7/6/84,

or 2) A RICO treble damage order on 7/6/84 (JA 696) which was for an additional $1,995,642.76 (Pet. App. 12a) (JA Vol. I at pp. 531-532)

B. The foregoing follows because the Appellate Court Records and this Supreme Court records disclose the following:

(1) On July 6, 1984 the Goldstein's combined beneficial interest in the Plan amounted to $881,232.76 of the Plans assets of $1,377,765 "...(including the full face value of the 1/20/84 ERISA $997,821.38) judgment."...but not including the value ...of the BRIL (Partnership) land at the time of the forfiture order. This (beneficial) interest on 7/5/84 was $116,588 short of the ERISA 1/20/84 Judgment before the approval of the bond settlement on 7/6/84 (JA 650) but $61,080 in excess of that ERISA 1/20/84 judgment immediately after the bond settlement of $177,000 had

been approved on 7/6/84 (JA 650) but before issuing the "Offset" (forfiture) Order (JA 679) and the RICO Order (JA 695) on 7/6/84. At the time of the "Offset" (Forfiture) and RICO Orders on 7/6/84, there were no losses, injuries or damages to anyone (but the Goldstein's) and nothing to treble under RICO. Immediately after accepting the $177,000 bond settlement on 7/6/84 as stated above, no person in the Plan suffered any injury and no "damages" had been "sustained". Therefore there was no legal basis for the appellate court in its 3/27/87 order to affirm, (at Pet. a 12 and 13a) the RICO order of 7/6/84. This is supported and confirmed by Exhibit O in Exhibits Vol. II. See: RICO (18 USC 1964(c) and Sedima et al v. Impex et al (7/1/85) 473 US 479, 105 S Ct. 327, 329, 4739 (Slip Opinion p. 17 lines 5-10). As a result of the foregoing examine the following:

(1) The U.S. Supreme Court in interpreting RICO in Sedima et al v. Immex Co. et al, Supra which held:

(a) "the plaintiff only has standing and can only recover to the extent he has been injured..." (See slip opinion p. 17 line 4)

(b) "... nor is the defendant liable to those who have not been injured..." (see slip opinion p. 17 line 10).

(2) The related RICO statute in 18 USC 1964 (c) which states:

(a)"... injured by reason of a violation of Sec. 1962 ..." and

(b)"... and shall recover threefold the damages he sustains ..."

III. Miscellaneous Issues

A. Note also that if as a result of the Rule 60(b) review the plaintiff fails to establish beyond a reasonable doubt that there was a malicious intent or mens rea in

making the extrordinary profitable investment in the BRIL Real Estate; then, the injury would not have been caused by conduct constituting a violation of Sec. 1962 or predicate act. See p. 17 of the slip opinion of the July 1, 1985 Sedima Case of this Supreme Court in 105 S Ct. 3275, 473 US 479.

B. In addition it is doubtful whether under the common law concepts of the criminal law a man can embezzle his own property or his partnership property. (See Handbook on Criminal Law, West Publ. Co. (1934) p.380 by J. Miller.

C. The conclusions, statements of law, quotation and legal citations included in paragraphs Second, Third, and Fourth on pp. 12 a and 13 a 8/16 Pet.) erroneous and wrong.

WHEREFORE, Petitioner Goldstein requests and suggests: (1) that the scheduled conference for Nov. 6, 1987, No. 87-281, be deferred and (2) that Petitioner be directed to present to this Supreme Court by Supplemental Brief under Rule 22.6 the details of the undisputed facts involved in the related Appeal No. 87-5297.

Respectfully submitted,

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